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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

CANTER v. COMMONWEALTH.

March 23, 1916.

[88 S. E. 327.]

1. Criminal Law (§ 1092 (9)*)—Appeal and Error—Sufficiency of Record—Bill of Exceptions.—Code 1904, § 3385, as amended by Acts 1916, c. —, providing that consent to extend the time for filing a bill of exceptions may be entered either during the term at which the judgment was rendered or during any subsequent term of vacation, was retroactive, so as to render effective the entry of record, at a subsequent term, of consent to extend the time for tendering a bill of exceptions.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 2857-2861; Dec. Dig. § 1092 (9).* 5 Va.-W. Va. Enc. Dig. 387.]

2. Homicide (§ 250*)—Evidence—Sufficiency.—In a prosecution for murder, evidence held insufficient to sustain a verdict of guilty.

[Ed. Note.—For other cases, see Homicide, Cent. Dig. §§ 515-517; Dec. Dig. § 250.* 7 Va.-W. Va. Enc. Dig. 147.]

Error to Circuit Court, Washington County.

James Canter was convicted of murder and he brings error. Reversed and remanded.

N. P. Oglesby, Geo. M. Warren, and Bolling H. Handy, all of Bristol for plaintiff in error.

The Attorney General, for the Commonwealth.

CARPENTER v. SMITHEY.

March 16, 1916. Rehearing Denied April 3, 1916.

[88 S. E. 321.]

1. Appeal and Error (§ 231 (3)*)—Objections—Sufficiency of Objections.—An objection by defendant to the entire statement of a witness who had testified at length is insufficient to warrant review of objectionable matter contained therein; it not being pointed out to the court.

[Ed. Note.—For other cases, see Appeal and Error, Dec. Dig. §

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

231 (3);* Pleading, Cent. Dig. § 1439; Trial, Cent. Dig. § 194. 1 Va.-W. Va. Enc. Dig. 541.]

2. Attorney and Client (§ 166 (3)*)—Compensation—Actions—Evidence.—In an action by an attorney to recover compensation for services rendered under a contingent fee contract, where he had testified that defendant owed him for a one-third undivided interest in land, testimony that defendant owed him \$1,000 for his interest in such land is properly received.

[Ed. Note.—For other cases, see Attorney and Client, Cent. Dig. § 370; Dec. § 166 (3).* 2 Va.-W. Va. Enc. Dig. 167.]

3. Evidence (§ 366 (7)*)—Documentary Evidence—Admissibility.—Where an attorney claimed compensation for services rendered under an agreement for a contingent fee, and it appeared that he was only partially successful, the bill he filed on defendant's behalf is not admissible without the entire record of the suit, showing the progress and outcome.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 1528; Dec. Dig. § 366 (7).* 4 Va.-W. Va. Enc. Dig. 762.]

4. Appeal and Error (§ 1046 (5)*)—Conduct of Court—Cure of Error.—In an attorney's action for compensation for services rendered, where, after he had testified to the contract with defendant, the court stated the attorney was entitled to his money if the jury believed his testimony, the action of the court in subsequently striking out the attorney's testimony cured any error in the statement.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4134; Dec. Dig. § 1046 (5).* 1 Va.-W. Va. Enc. Dig. 609.]

5. Trial (§ 203 (1)*)—Instructions—Evidence.—Where there was evidence in support of every fact upon which an instruction was predicated, and a verdict based thereon, could not be set aside, the court is bound to give an instruction presenting that issue.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 478; Dec. Dig. § 203 (1).* 7 Va.-W. Va. Enc. Dig. 708.]

6. Trial (§ 191 (3)*)—Instructions—Assumption of Facts.—Where an attorney rendered services under a contract for a contingent fee, an instruction, that if defendant employed the attorney, agreeing to pay as a contingent fee one-half of the difference between the sum of \$7,000 and whatever sum in excess of that might be realized on a subsequent sale of the land, the timber rights to which were in question, etc., was not objectionable as assuming that, because defendant subsequently sold the land for more than \$7,000, he was benefited to that extent by the litigation.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 423-426; Dec. Dig. § 191 (3).* 7 Va.-W. Va. Enc. Dig. 723.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

7. Trial (§ 191 (3)*)—Instruction—Erroneous Assumption of Fact.—In an attorney's action for services rendered under an agreement for a contingent fee, where he was partially successful, an instruction, assuming that the result of the action was adverse to defendant, his client, is properly refused.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 423-426; Dec. Dig. § 191 (3).* 7 Va.-W. Va. Enc. Dig. 723.]

8. Trial (§ 252 (1)*)—Instructions—Basis in Evidence.—An instruction, presenting an issue having no basis whatever in the evidence, is properly refused.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 596, 621; Dec. Dig. § 252 (1).* 7 Va.-W. Va. Enc. Dig. 718.]

9. Trial (§ 253 (6)*)—Instructions—Refusal.—An instruction, directing verdict for defendant on a partially inadequate statement of the facts, on which plaintiff based his claim, is properly refused.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 618 ; Dec. Dig. § 253 (6).* 7 Va.-W. Va. Enc. Dig. 737.]

10. Trial (§ 260 (1)*)—Instructions—Refusal.—The refusal of instructions covered by those given is not error.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 651; Dec. Dig. § 260 (1).* 7 Va.-W. Va. Enc. Dig. 716.]

11. Assumpsit, Action of (§ 5*)—Common Counts—Scope of.—Where an attorney rendered services under a contract providing for a contingent fee, and the contract was wholly executed, he may recover his fee in assumpsit on the common counts, and it is not necessary to state his cause of action in a special count.

[Ed. Note.—For other cases, see Assumpsit, Action of, Cent. Dig. §§ 14-26; Dec. Dig. § 5.* 2 Va.-W. Va. Enc. Dig. 7.]

12. Appeal and Error (§ 1002*)—Review—Verdict.—The credibility of witnesses being for the jury, a verdict on conflicting evidence will not be disturbed.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3935-3937; Dec. Dig. § 1002.* 1 Va.-W. Va. Enc. Dig. 591.]

Error to Circuit Court, Brunswick County.

Assumpsit by Marvin Smithey against W. R. Carpenter. There was a judgment for plaintiff, and defendant brings error. Affirmed.

Turnbull & Turnbull, of Lawrenceville, and *Jeffries & Jeffries*, of Norfolk, for plaintiff in error.

Buford & Peterson, of Lawrenceville, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.